

REMARKS**Election**

Applicants confirm the provisional election without traverse of Invention I and Species 3.

Claims

Claims 47-49 and 60 have been canceled.

Claims 61-62 have been added.

35 U.S.C. §112

Claims 50 and 53 have been amended to change the claimed "piercing device" to "cutting element," for which antecedent basis exists.

35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (emphasis added).

Claims 34-42

Claim 34 has been amended to claim, among other elements, "a deployment tool [and] an anastomosis device detachably connected to said deployment tool, said anastomosis device deformable to a deployed state." The anastomosis device had previously appeared in the preamble of the claim, and is now positively claimed.

In contrast, Milo does not expressly or inherently describe an anastomosis device, much less an anastomosis device deformable to a deployed state. Milo is merely a tissue punch. Thus, Milo neither expressly nor inherently describes each and every element claimed in claim 34, and Applicants believe claim 34 is in condition for allowance.

Claim 34 is a generic claim. Thus, allowance of this claim would result in allowance of all species, including the species claimed in claims 35-42. Further, claims 35-42 depend directly or indirectly from claim 34, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 43-54

Claim 43 has been amended to claim "[a] device for piercing the wall of a target vessel, comprising: a tubular sheath having an edge at its distal end; a cutting element slidable within said tubular sheath; and a cable attached to said cutting element; wherein said cutting element is insertable through the wall of the target vessel and retractable by said cable to compress the wall of the target vessel against said edge, wherein a portion of the wall of the target vessel is removed."

In contrast, neither LeMole nor Williamson, IV expressly or inherently describe a cable of any kind; much less a cable attached to a cutting element such that the cutting element is retractable by the cable. Thus, neither LeMole nor Williamson, IV expressly nor inherently describes each and every element claimed in claim 43, and Applicants believe claim 43 is in condition for allowance. Claims 47-49 have been canceled. Claims 44-46 and 50-54 depend from claim 43, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III)

Claims 58-62

Claim 58 has been amended to claim "[a] device for piercing the wall of a target vessel and removing a tissue ring therefrom, comprising: a tubular sheath including a lumen therein; and a cutting element slidable within said tubular sheath, wherein said cutting element cooperates with said tubular sheath to remove the tissue ring from the wall of the target vessel and move the tissue ring out of said lumen."


In contrast, Milo does not expressly or inherently describe each and every element of claim 58. Milo describes a tube 1 having a cutting edge 9 at its distal end. (Milo, col. 2, lines 16-17; Figure 1). The tube 1 is a simple right cylindrical tube that makes no provision for moving the tissue cut by the cutting edge 9 and the cutting disc 7 out of the lumen of the tube.

Thus, Milo neither expressly nor inherently describes each and every element claimed in claim 58, and Applicants believe claim 58 is in condition for allowance. Further, claims 59 and 61-62 depend from claim 58, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III). Claim 60 has been canceled.

REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,


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